



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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June 4, 2008
AO-08-03

Representative Carl M. Sciortino, Jr.
17 Orchard Street
Medford, MA 02155

Re: Creation of separate account to pay for legal expenses

Dear Representative Sciortino:

This letter is in response to your recent request for guidance regarding the creation of a separate account to raise and spend money to pay certain legal expenses.

You have stated that you are involved in an ongoing court case related to your getting on the ballot for this September's primary election. The case has been heard in the Suffolk Superior Court, and is now pending before the Massachusetts Appeals Court. It concerns your request to have the Secretary of the Commonwealth certify your name on the ballot. You have also stated that it is possible that this case could result in a challenge before the State Ballot Law Commission. A portion of the legal fees have already been paid from your campaign committee account, but you expect to incur additional fees.

QUESTIONS

You have asked the following questions:

- (1) May you set up an account, separate from your campaign committee account, to receive funds solely to pay legal fees associated with being certified to be on the ballot?
- (2) May you solicit donations for this separate account?
- (3) Would donations made to such a separate account be considered in calculating whether an individual's annual contribution limits are met?
- (4) Do other campaign finance limits and restrictions apply?
- (5) May legal fees already paid out of your campaign committee account be reimbursed using funds that are deposited into the separate account?



ANSWERS

You may set up such an account to solicit and receive funds for the described purpose. Donations would not count towards an individual's annual contribution limits, and other limits and restrictions of the campaign finance law would not apply. The funds that are deposited into the separate account may not, however, be used to reimburse your campaign account for legal expenditures already made from your campaign account.

DISCUSSION

The campaign finance law defines "contributions" and "expenditures" in relevant part, as money or anything of value given or spent "for the purpose of influencing the nomination or election" of a candidate. See M.G.L. c. 55, § 1. In the context of the facts presented in your letter, the separate account would not be receiving "contributions" or making "expenditures" subject to the disclosure requirements and limits of the campaign finance law. Rather, the account would appear to primarily be intended to raise and spend money for the limited purpose of your being able to pursue litigation so you can be on the ballot.

The office has not previously considered whether the campaign finance law allows a candidate to set up a separate account to raise and spend money for this purpose. Five years ago, the office issued regulations, however, that allow a candidate to establish a separate account for the similar purpose of receiving money to pay for legal expenses arising from a recount. See 970 CMR 1.04(13). In accordance with the regulation, funds received into such an account "are not 'contributions' subject to the restrictions and reporting requirements of the campaign finance law."

The regulation was issued to codify OCPF's longstanding interpretation that when funds are raised and spent to seek a judicial determination of rights, such funds are not raised to influence voters. Therefore, if the funds are not deposited into a campaign account, they would not be considered "contributions" as that term is defined in the statute. See AO-93-36 and AO-95-44 (stating that payments for legal expenses relating to the certification of a ballot question are not "expenditures" made to oppose a ballot question and do not have to be paid by a political committee), and AO-99-12 (payments for legal expenses relating to defending a defamation action arising from an official's performance of his duties do not have to be considered "expenditures" by a candidate's committee).

A donation received to pay legal fees incurred to be placed on the ballot, like a donation received to pay legal costs associated with a recount, is not given for the purpose of influencing voters. Accordingly, donations raised for such purposes are not "contributions" within the scope of the campaign finance law, and may be received and deposited into a separate account.

If a separate account is created to raise money to pay such legal costs, the funds raised would not be subject to the restrictions or disclosure requirements of the campaign finance law. Therefore, the separate account may not reimburse your campaign committee for legal fees already paid by the committee, and the account may not be used to make expenditures to benefit your campaign or your political committee.

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The advice in this letter is limited to providing guidance within the scope of the Massachusetts campaign finance law. You should contact the State Ethics Commission to ensure compliance with the conflict of interest law, M.G.L. c. 268A.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Sullivan", with a stylized flourish at the end.

Michael Sullivan
Director